

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 14563 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PASCHIM GUJARAT VIJ COMPANY LTD
THRO' EXECUTIVE ENGINEER

Versus

AUM BUSINESS HOUSE PVT LTD. THRO' PRAVINBHAI

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Appearance :

MR PREMAL R JOSHI for the Petitioner

MR TUSHAR MEHTA for the Respondent

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 18/06/2007

ORAL JUDGMENT

1. **RULE.** Learned advocate Mr.Tushar Mehta, who appears on caveat waives service of Rule on behalf of the respondent.

2. Present petition is filed challenging order passed in Misc. Civil Application No.93 of 2007 in Regular Civil Suit No.382 of 2001 dated 11.04.2007, whereby the learned Second Joint District Judge, Bhavnagar granted the application and ordered to restore Misc. Civil Application No.52 of 2002, which was dismissed for default.

3. Learned advocate for the petitioner invited attention of the Court to few glaring facts:

I. Misc. Civil Application No.52 of 2002 was dismissed for default on 07.07.2006.

II. The restoration application was filed on 17.02.2007.

III. By any calculation, the application for restoration was time barred.

The learned Second Joint District Judge, instead of asking the party to file an application for condonation of delay, ignored the delay by saying that, 'in view of the judgment of the Hon'ble the Apex Court, on account of negligence of the advocate, the party cannot be made to suffer'. The learned Judge held that, 'the period of limitation is to start from the date of knowledge of the party' and allowed the application observing that, 'no separate application for condonation of delay is required to be filed'.

4. The learned Judge has erred in law. His point of view that

period of limitation will start not from the date of the order, but from the date of knowledge of that order to the party is against the settled law on the point.

The settled law is that the period of limitation starts from the date of the order and date of knowledge of that order to the party may be a good ground for condonation of delay.

5. In view of that, the petition is allowed. Order dated 11.04.2007 is quashed and set aside. The learned Judge is directed to take up Misc. Civil Application No.93 of 2007 for hearing and decide the same in accordance with law.

It is clarified that quashing of order dated 11.04.2007 does not debar the party to file an application for condonation of delay separately, which the learned Judge shall consider in accordance with law.

6. Rule is made absolute with no order as to costs. Direct service is permitted.

(RAVI R. TRIPATHI, J.)

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